

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

INSULATE SB, INC., a California
Corp., individually and on behalf
of all others similarly situated,

Plaintiff,

v.

ABRASIVE PRODUCTS &
EQUIPMENT, *et al.*

Defendants.

Case No. 1:13-cv-01609-YK

(Chief Judge Yvette Kane)

**EXPEDITED REVIEW
REQUESTED**

Filed Electronically

**The Moving Defendants'
Expedited Motion for an
Enlargement of Time to Respond to the Complaint**

Defendants Abrasive Products & Equipment, LLC (APE), Advanced
Finishing Systems, Inc., Air Power, Inc., Airtech Spray Systems, Barnhardt
Manufacturing Company, C.J. Spray Inc., Coatings Holdings Ltd.,
Corrosion Specialties, Inc., Demilec (USA), LLC, EnDiSys Fluid Delivery
Systems, F&S Equipment and Supplies, Inc., Graco Inc. and Graco
Minnesota Inc. ("Graco"), Hydraflow Equipment Co., Marco Group
International, Inc., Midway Industrial Supply, Specialty Products, Inc.,
Spray Foam Systems, LLC, Spray-Quip, Inc., The Paint Project, and

Ultimate Linings, Ltd. (collectively, “Moving Defendants”), by and through their counsel, respectfully move for an enlargement of time to respond to the Complaint until 30 days after the Court’s ruling on Graco’s pending motion to transfer venue under 28 U.S.C. § 1404(a), and state the following in support:

Introduction

1. On June 14, 2013, Plaintiff filed suit in this Court, asserting complex antitrust claims against Graco and 32 other defendants. *See* Dkt. 1. The Moving Defendants’ responses to the Complaint, along with numerous other defendants, are due on either August 29 or 30, or September 15, 2013. *See* Dkt. 23, 54, 86, 90, and 91.

2. On July 19, 2013, Graco filed in this Court a Motion under 28 U.S.C. § 1404(a) to transfer venue to the Federal District of Minnesota (hereinafter, “Motion to Transfer Venue”). *See* Dkt. 67.

3. Numerous distributor Defendants intend to raise improper-venue and personal jurisdiction motions if the matter is not transferred to the District of Minnesota.

4. On August 5, 2013, Plaintiff filed and served Graco with a brief in opposition to Graco’s Motion to Transfer Venue. *See* Dkt. 131.

5. Under L.R. 7.7, this Court's Standing Order 05-6, and Fed. R. Civ. P. 6(d), Graco's reply in support of its Motion to Transfer Venue is due on August 22, 2013, although it intends to file it well in advance of the deadline.

6. The Moving Defendants also plan to file a Rule 12(b)(6) Motion to Dismiss in response to the Complaint, and will seek a stay of discovery pending determination of that motion. But with Graco's Motion to Transfer Venue still unresolved, the Moving Defendants do not know whether this Court or the District of Minnesota will ultimately hear their Motions to Dismiss.

7. Thus, for reasons of judicial economy, the efficient use of resources, and "to secure the just, speedy, and inexpensive determination" of this action, the Moving Defendants bring this Motion for an Extension of Time. Fed. R. Civ. P. 1; *see also* L.R. 7.5. In particular, the Moving Defendants seek an Order from this Court staying their responsive-

pleading deadline until 30 days after the Court decides whether to transfer this action. Dkt. 67.¹

8. The Moving Defendants also seek expedited review of this extension motion given the imminence of the Moving Defendants' current August 29, 30, and September 15, 2013 responsive-pleading deadlines. Dkt. 23, 54, 86, 90, and 91; *see* L.R. 7.6 (this Court may "grant any motion before expiration of the prescribed period for filing a brief in opposition").

**The Moving Defendants' Requested Time Extension
Advances Judicial Economy**

9. Staying the Moving Defendants' responsive-pleading deadline pending the resolution of Graco's Motion to Transfer Venue advances judicial economy in several ways.

10. First, staying the Moving Defendants' responsive-pleading deadline will ensure this Court is not unnecessarily burdened with the Moving Defendants' Motions to Dismiss until the Court has decided the proper venue for this action. The extension will also preclude or minimize

¹ To further preserve judicial resources, the Court may also want to enlarge the time to respond for all defendants and not just the Moving Defendants. The Moving Defendants have no objection to, and indeed, would support, the Court doing so.

the need for the Court to manage subsequent filings by Plaintiff, including time-extension motions. In fact, extending all Defendants' responsive-pleading deadlines may obviate the need for motion-to-dismiss briefing directed at the lack of personal jurisdiction and proper venue in this District.

11. Second, staying the Moving Defendants' responsive-pleading deadline will aid the District of Minnesota if this Court decides to grant Graco's Motion to Transfer Venue. Absent the stay, if this Court decides to transfer venue, the District of Minnesota may require new briefing on the Moving Defendants' Motions to Dismiss – and any responses to them filed by either Plaintiff or any Defendant – under Eighth Circuit law and the District of Minnesota's local rules² in light of the transfer.

12. Third, for similar reasons, deferring motion-to-dismiss briefing until the appropriate venue is determined will conserve the parties' resources by minimizing the potential for duplicative briefing.

13. Fourth, extending the Moving Defendants' responsive-pleading deadline is consistent with the stay of briefing requested by Plaintiff – and

² Compare, e.g., M.D. Pa. L.R. 7.8(b)(2) (5,000-word-limit for briefs), with D. Minn. L.R. 7.1(f)(1)(A) (12,000-word-limit for briefs)].

granted by this Court – on Plaintiff’s preliminary injunction motion. *See* Dkt. 29. Both requests ensure this Court is not burdened with briefing on a major issue until the Court has decided an underlying dispute with significant ramifications for the course of the litigation.

14. Not surprisingly, courts in similar circumstances have observed that venue should be addressed *before* proceeding to the merits of the action. *See In re Fusion-Io, Inc.*, 489 Fed. Appx. 465, 466 (Fed. Cir. 2012) (directing that district court should address motion to transfer under 28 U.S.C. § 1404(a) “*before* proceeding to any motion on the merits of the action”) (emphasis added) (collecting cases).

**No Party Will Be Prejudiced by the Moving Defendants’
Requested Time Extension**

15. By contrast, extending the Moving Defendants’ responsive-pleading deadline pending resolution of Graco’s Motion to Transfer Venue will not prejudice any party to this case and will, as explained above, avoid prejudice to the parties by eliminating unnecessary and duplicative proceedings.

WHEREFORE, the Moving Defendants request this Motion be expeditiously granted and that this Honorable Court enter the attached proposed Order.

Dated: August 7, 2013 **OBERMAYER REBMANN MAXWELL & HIPPEL LLP**

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**Certificate of Counsel Pursuant to Local Rule 7.1
in Support of the Moving Defendants’
Expedited Motion for an Extension of Time to Respond to the Complaint**

Counsel for Defendants Abrasive Products & Equipment, LLC (APE),
Advanced Finishing Systems, Inc., Air Power, Inc., Airtech Spray Systems,
Barnhardt Manufacturing Company, C.J. Spray Inc., Coatings Holdings
Ltd., Corrosion Specialties, Inc., Demilec (USA), LLC, EnDiSys Fluid
Delivery Systems, F&S Equipment and Supplies, Inc., Graco Inc. and Graco
Minnesota Inc. (“Graco”), Hydraflow Equipment Co., Marco Group
International, Inc., Midway Industrial Supply, Specialty Products, Inc.,
Spray Foam Systems, LLC, Spray-Quip, Inc., The Paint Project, and
Ultimate Linings, Ltd. (collectively, “Moving Defendants”) certifies that

they have sought concurrence from each represented party in this case through their counsel-of-record to the relief sought in this Motion.

Counsel further certifies that as of the date-and-time when this Motion was filed:

1. Plaintiff has been notified of this Motion and opposes the Motion.

2. The following thirteen Co-Defendants have not yet appeared by counsel in this case:

Carolina Equip. & Supply Co.	Intech Equipment & Supply LLC
C.H. Reed, Inc.	MCC Equipment & Service Ctr.
Clemtex Inc.	North Carolina Foam Industries
Coast Industrial Systems, Inc.	Spray Foam Nation
Dove Equipment Co., Inc.	Spray Pump, Inc.
Golden State Paint Corp.	Urethane Supply Co.
Jack DeMita	

Dated: August 7, 2013 **ROBINS, KAPLAN, MILLER & CIRESI LLP**

By: s/ Anne M. Lockner
Anne M. Lockner (*pro hac vice* MN 295516)

*Attorneys for Defendants Graco Inc. and
Graco Minnesota Inc.*

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**Certificate of Service in Support of
the Moving Defendants' Expedited Motion
for an Enlargement of Time to Respond to the Complaint**

I certify that on August 7, 2013, the foregoing Motion was filed electronically with the Clerk of the Court using CM/ECF. I further certify that the foregoing Motion is being served this day on all Counsel of Record via transmission of Notices of Electronic Filing generated by CM/ECF.

I further certify that I served a copy of the Motion this day on the following unrepresented parties by U.S. Mail, postage prepaid:

Dated: August 7, 2013 **OBERMAYER REBMANN MAXWELL & HIPPEL LLP**

By: s/ Walter W. Cohen

Walter W. Cohen (PA 12097)

*Attorneys for Defendants Graco Inc. and
Graco Minnesota Inc.*